# In the Supreme Court

OF THE

# United States

OCTOBER TERM, 1979

**No. 79-73**

ADELAIDE SHIPPING LINES, LTD.,
SALEN REEFER SERVICES AB, and M. V. GLADIOLA,
*Petitioners,*

vs.

SUNKIST GROWERS, INC.,
*Respondent.*

**On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

## BRIEF OF PETITIONERS IN REPLY TO BRIEF FOR THE UNITED STATES

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In seeking the views of the United States, the Court was presumably interested in public policy, particularly as it concerns the relationship between an Act of Congress and an international convention. What the Solicitor General has submitted, however, is an analysis of the court of appeals opinion such as this Court can do (and has undoubtedly done) without advice from the Executive Department.[1]

[1]If the United States had responded to the question it was presumably asked, it might have commented on the propriety of the lower court's adopting, as it did, the construction placed on the Hague Rules by the Privy Council as a basis for ignoring express terms of an American statute.

The Solicitor General acknowledges in his footnotes 4 and 5 the importance of the question presented and the existence of the conflict if the decision is not, as he says, one of fact. We have already demonstrated in our earlier Reply Brief (pp. 1-4) that the court of appeals did not decide this case simply on the basis of a disagreement with the facts as found by Judge Orrick and, therefore, will not repeat the demonstration in order to expose the error of the Solicitor General's contrary conclusion. We are amazed, however, at his sanguine acceptance of disorderly procedures by the court of appeals. To dispose of the case on a contrary reading of the record the court of appeals would have had to reverse as clearly erroneous Finding No. 32 with respect to the ferrule and Finding No. 34 with respect to the training of the crew. It did not do so and could not plausibly do so on the evidentiary record.[2] The court itself explained its treatment of the findings otherwise when it said (Pet. App. 30-B) that "the district court's findings of fact rested upon an erroneous view of the law."

That the court of appeals expects its new standard of law to be applied in future cases is clear.[3] The result will

[2]Although the record is not before the Court at this time, we consider that this statement should be documented. It is, of course, inherently implausible that high management would be involved in the use of an improper ferrule, a small object invisible when assembled and in use, and the record is devoid of evidence that there was any management fault or neglect in the use of the ferrule. As to the training of the crew, the record shows abundant evidence from which the district court was entitled to conclude, as it did, that high management had done its part with respect to providing a trained crew. (Tr., pp. 209-12, 220-23, 242-44, 247-50, 343-45, 347-49, 354.)

[3]In its Conclusion the court of appeals said (Pet. App. 29-B): "We adopt, as the law of our circuit, the construction placed on The Hague Rules by their Lordships in THE MAURIENNE. . . ."



be a disruptive administration of admiralty law on the Pacific Coast, regardless of how ingeniously the decision may be read to avoid the necessity of review in this Court. But, if the Solicitor General's view of the court of appeals decision is to be credited, then the least this Court should do is to remand the case to that court to clarify the point and state which of Judge Orrick's findings, if any, it holds clearly erroneous. Reversal on a factual basis on the present opinion of the court of appeals would be a highly disorderly departure "from the accepted and usual course", which ought to be corrected.[4] With our knowledge of the record, we are confident that the court of appeals, with its attention focused on the point, cannot set aside the critical findings under proper standards.

The petition for certiorari should be granted on the basis of the lower court's unequivocal announcement of a standard in conflict with decisions of this Court and other courts of appeals or, in the alternative, the case should be remanded to the court of appeals with directions to clarify its decision as to whether, and on what basis, it reversed any findings of fact.

Respectfully submitted,

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[4]*See* U.S. Sup. Ct. rule 19; and *see* Dalehite v. United States, 346 U.S. 15, 24, 1953 A.M.C. 1175, 1182 n.8 (1953), discussing standards of definiteness for district court findings, which must surely apply, *mutatis mutandis*, to determinations of a court of appeals overturning such findings.